Nos. 10-1491 & 11-88

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Supreme Court of the United States

ESTHER KIOBEL, *et al.*,
Petitioners,

v.

ROYAL DUTCH PETROLEUM CO., *et al*
Respondents.

ASID MOHAMAD, *et al.*,
Petitioners,

v.

PALESTINIAN AUTHORITY, *et al.*,
Respondents

On Writs of Certiorari to the United States Court of Appeals for the Second and District of Columbia Circuits

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BRIEF OF *AMICI CURIAE* DR. JUAN ROMAGOZA ARCE, CECILIA SANTOS MORAN, AND KEN WIWA IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICI CURIAE* [1]

For decades now, victims of human rights abuses have used the Alien Tort Statute, 28 U.S.C. §1350 ("ATS") and later the Torture Victim Protection Act, 28 U.S.C. §1350, note ("TVPA"), to seek redress against those responsible—natural persons, organizations, and corporations alike—for perpetrating the abuses against them. For these victims, the results have been profound. The cases have afforded them the opportunity to hold the perpetrators to account, thereby obtaining a measure of justice for themselves and their families; to establish a truthful historical record; and to contribute to broader efforts to deter human rights abuses. Indeed, these cases have marked "a small but important step in the fulfillment of the ageless dream to free all people from brutal violence." *Filártiga v. Peña-Irala*, 630 F.2d 876, 890 (2d Cir. 1980).

Despite this "important step" in the march toward the protection and promotion of human rights, this case presents the question of whether some human rights victims will be denied access to justice simply because the party responsible for those abuses is a non-natural person. In other words, this case will determine whether victims of the most severe human rights crimes, including genocide, crimes against humanity, extrajudicial killing and torture, will be artificially divided into two classes—with one class afforded access to U.S. courts and all of the rights

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[1] Pursuant to Rule 37.6, *amici curiae* affirm that no counsel for a party authored this brief in whole or in part and that no person other than *amici curiae* or their counsel made a monetary contribution to its preparation or submission. The parties' letters consenting to the filing of this brief have been filed with the Clerk's office.

and benefits that derive from such access; and another class denied access to U.S. courts, and thus denied a means to adequately redress the harms they have suffered.

Amici curiae are survivors of egregious human rights violations who have sued, under the ATS and TVPA, those responsible for the human rights crimes inflicted upon them. In light of their experiences, *amici curiae* are uniquely qualified to explain how important it is to file TVPA and ATS lawsuits, not only for themselves, but also for their families and communities. Their litigation experiences compel *amici curiae* to conclude that denying the very real and tangible benefits of participating in these lawsuits to victims of human rights abuses committed at the behest of corporations, organizations, or other juridical entities would signify a manifestly unjust step backward in the "dream to free all people from brutal violence."

SUMMARY OF ARGUMENT

Amici curiae submit that perpetrators of gross human rights violations like torture and extrajudicial killing are *hostis humani generis*—the enemy of all mankind—regardless of their juridical form. Indeed, human rights crimes are not perpetrated by people acting alone. To the contrary, they are designed, orchestrated, financed, and supported by states, organizations, corporations, and other non-natural persons. A decision to exempt these non-natural persons from liability would therefore result in impunity and a license to engage in, and even profit from, these universally-condemned crimes.

Congress intended the ATS and TVPA to serve as critical bulwarks against such impunity. They do so

by providing human rights victims an opportunity to seek redress and to hold those who can and should be held accountable, whether that is the person who directly perpetrated the abuse, or the organization or entity that ordered, directed, or aided and abetted the abuse.

Indeed, as *amici curiae* know well from their personal experiences, human rights abuses are generally conducted in circumstances that make it difficult to identify the person who directly abused them or their loved ones. But victims are often able to identify the organization or entity that armed, supplied, ordered, or claimed responsibility for the abuses. From the perspective of *amici curiae*, those with the power or authority to order, and also to stop or prevent these horrific abuses are at least as culpable, if not more so, for their role in perpetrating these crimes. Accordingly, *amici curiae* submit that when the culpable party is an organization or corporation that is sufficiently connected to the United States to establish personal jurisdiction, they should, provided all other statutory requirements are satisfied, be subject to suit here.

Amici curiae have suffered searing pain as a result of egregious violations of customary international law. The experiences of *amici curiae* confirm that ATS and TVPA lawsuits help to relieve that pain by securing judicial acknowledgment of the abuses they endured, enabling survivors to break the silence surrounding their abuses, and contributing to anti-impunity efforts, which benefit themselves and their communities.

For these reasons, *amici curiae* urge the Court to maintain the opportunity for *all* survivors of human rights abuses to seek redress against those who can

and should be held to account for the egregious crimes perpetrated against them, regardless of whether the culpable party is a corporation, organization, or other non-natural person.

ARGUMENT

I. VICTIMS MUST HAVE THE RIGHT TO SEEK REDRESS AND ACCOUNTABILITY AGAINST CORPORATIONS AND ORGANIZATIONS THAT PARTICIPATE IN HUMAN RIGHTS ABUSES.

The ATS and TVPA serve the dual purposes of denying human rights abusers impunity and providing victims relief for the harms they suffered. This Court has described the TVPA as "a clear mandate" that "establish[es] an unambiguous and modern basis for federal claims of torture and extrajudicial killing." *Sosa v. Alvarez-Machain*, 542 U.S. 692, 728 (2004) (quoting H.R. REP. No. 102-367, at 3, 102d Cong. 1st Sess. (1991)) reprinted in 1992 U.S.C.C.A.N. 84). The Congressional mandate is clear because the TVPA and ATS provide redress for crimes that unequivocally violate the law of nations. *See, e.g., Filártaga*, 630 F.2d at 884 ("official torture is now prohibited by the law of nations. The prohibition is clear and unambiguous . . ."); *Forti v. Suarez-Mason*, 672 F. Supp. 1531, 1542 (N.D. Cal. 1987) (the "proscription of summary execution or murder by the state appears to be universal, is readily definable, and is of course obligatory.").[3]

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[3] The TVPA likewise reflects the intent of the Executive Branch. While the TVPA was pending before Congress, the Reagan Administration expressed the United States' view that "torture, like hijacking, sabotage, hostage-taking and attacks on internationally protected persons, is an offense of special inter-

What is also clear is that these heinous violations are often committed in concert with organizations and corporations. Thus, to give effect to the goals of the TVPA and the ATS, victims must be able to seek redress against non-natural persons when evidence establishes their complicity in their injuries.

A. Excluding Non-Natural Persons From Liability Creates an Artificial and Unjust Divide Among Human Rights Victims.

The indignities suffered by human rights victims result in incalculable harm irrespective of whether the party responsible for the indignities is a natural person or a corporation or organization. *Amici curiae* submit that it would be therefore anomalous and unjust to exempt non-natural persons from liability.

1. *Perpetrators with "blood on their hands" do not act alone.*

As a practical matter, victims often cannot identify the natural persons who personally and directly perpetrated the human rights crimes against them or their loved ones. That is of course by design. Those who perpetrate these types of atrocities often purposefully do so in circumstances that deny the victims the ability to identify them. They blindfold their victims or otherwise deprive them of their senses; take them to undisclosed locations in the dark

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national concern, and should have similarly broad, universal recognition as a crime against humanity, with appropriate jurisdictional consequences," including being held responsible "by any state in which the alleged offender is found." Message from the President of the United States Transmitting the Convention Against Torture S. Treaty Doc. No. 100-20, at 9 (1988).

of night; rotate turns among those perpetrating the abuse; and rarely allow witnesses to observe their crimes.

However, and significantly for human rights victims, the person who directly commits the abuses does not act alone. Generally, the perpetrator acts at the behest of a government or an organization or other juridical entity. The perpetrators may announce that they are acting on behalf of a known group or organization; they may wear uniforms, insignia or logos identifying their association with a particular group; or the victims may be held in a location controlled by a particular group or entity. As a result, while the identity of the direct perpetrator may be unknown, victims are often able to ascertain the identity of the party responsible for ordering or aiding and abetting the abuse.

That is precisely the situation that *amici curiae*, Cecilia Santos Moran and Dr. Juan Romagoza Arce, endured. In September 1980, *amica* Santos was a math student at the National University in San Salvador, El Salvador. One day while she was at the *Supermercados Todos*, a shopping center in San Salvador, two private security officers entered the bathroom and took her to the basement of the shopping center. Later, two more men arrived and forced her into a taxi that eventually dropped her off near the headquarters of the National Police.

After the taxi stopped, one of her captors grabbed Santos' arm and walked her into the National Police building. Once inside, Santos was taken to the second floor, blindfolded, and led through a tunnel to a small room with a desk. Despite the blindfold, as she walked, Santos could feel and hear bodies of people on the tunnel floor in pain and crying.

Once inside the room, Santos, still blindfolded, was interrogated, sexually assaulted, and tortured. The men threatened to harm her family, poured acid on her hands, inserted Q-tips soaked with acid in her nostrils, and applied electrical shocks to her arms, hands, mouth and breasts, causing her extreme pain. Santos nearly lost consciousness each time the shocks were applied. When they eventually removed the blindfold, Santos saw that the men wore masks. However, she also saw that two of her interrogators wore civilian clothes and that two of them wore khaki pants, khaki shirts, and boots—the typical uniform of the National Police.

After three years in detention, *amica* Santos fled to the United States. She and four other Salvadorans later filed a lawsuit, under the ATS and TVPA, against Colonel Nicolás Carranza, a former Vice Minister of Defense, who had relocated to Memphis, Tennessee. A jury found Colonel Carranza liable, under the doctrine of command responsibility, for the brutal torture suffered by Santos. A key aspect of the trial was Santos' testimony establishing that she was held captive and tortured by the Salvadoran National Police, which was under the command and control of Colonel Carranza. Because the crimes were part of a widespread and systematic campaign of abuses, the jury also found Colonel Carranza liable for crimes against humanity. *See generally Chavez v. Carranza*, Second Am. Compl., ¶¶ 31-38 (W.D. Tenn. 2002) (No. 03-2932); *Chavez v. Carranza*, 559 F.3d 486, 499 (6th Cir. 2009).

Amicus Dr. Romagoza was also among the many innocent civilians who were tortured during the repressive campaign of violence unleashed by the Salvadoran government in the 1970s and 1980s. Born in Usulutan, El Salvador, Dr. Romagoza entered medical school at the University of El Salvador in 1973. As part of his medical training, Dr. Romagoza set up medical clinics and provided health education to the underserved in the poor areas of San Salvador and neighboring communities.

In December 1980, as he was working at a church clinic, two vehicles carrying soldiers from the army and National Guard arrived and opened fire on the clinic. Dr. Romagoza was shot in the foot, then blindfolded and taken by helicopter to a local army garrison.

The next day, Dr. Romagoza was transferred to the National Guard headquarters in San Salvador. For 22 straight days, he was interrogated, beaten and tortured. For example, at the end of his second day of detention, while Dr. Romagoza was chained to an iron rod, naked and wounded, the Guardsmen administered electric shocks to his ears, tongue, testicles, anus, and the edges of his wounds until he lost consciousness. The Guardsmen forced him to regain consciousness by kicking him or burning him with cigarettes. Additionally, the Guardsmen anally raped him with foreign objects and subjected him to water torture and asphyxiation with a hood containing calcium oxide. During one session, his torturers shot him in his left hand and taunted him that he would never be able to perform surgery again.

During his entire ordeal, Dr. Romagoza did not learn the identities of the Guardsmen who personally tortured him. However, from his experiences, he knew who was responsible for ordering his torture: he knew that he was being detained at the headquarters of the National Guard, and he saw General Carlos Eugenio Vides Casanova, then Director General of the National Guard, during his detention.

After his release, Dr. Romagoza moved to the United States and was granted political asylum in 1983. Remarkably, he later learned that General Vides Casanova and General José Guillermo García (the latter was the Salvadoran Minister of Defense from 1979 to 1983) had also moved to the United States and were living out a comfortable retirement in southern Florida. Dr. Romagoza and two other plaintiffs filed suit against then under the TVPA and ATS. Although Dr. Romagoza did not see General García during his detention, he was able to offer extensive evidence about the role that General García had played in directing and ordering the brutality he suffered. In 2002, a jury found both Generals liable under the theory of command responsibility. *See generally Arce v. Garcia*, Second Am. Compl., ¶¶ 12-24 (S.D. Fla. 2000) (No. 99-8364); *Arce v. Garcia*, 434 F.3d 1254, 1259 (11th Cir. 2006).[3]

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[3] Courts have repeatedly held that the doctrine of command responsibility is an appropriate basis upon which to assert liability in ATS and TVPA cases. *See, e.g, Carranza v. Chavez*, 559 F.3d 486, 499 (6th Cir. 2009); *Ford v. Garcia*, 289 F.3d 1283, 1289 (11th Cir. 2002). From the perspective of *amici curiae*, there is no sound basis to recognize command responsibility but to deny other well-established principles of agency liability in the context of human rights crimes.

Thus, as was the case with *amica* Santos, in the case of Dr. Romagoza, the court recognized that liability rests not just with the perpetrator who directly applies the electrical shock, but also with the person who orders and supports that perpetrator. *Amici curiae* believe that, in a sense, those that control or authorize the abuse are even more culpable than those who directly inflict the harm. Thus, it would have been unjust if *amici curiae* Romagoza and Santos had been denied an opportunity for redress simply because the abuses they suffered were committed at the behest of a corporation or organization instead of high-ranking government officials.

2. *Non-natural persons should not escape liability when evidence establishes their complicity in human rights abuses.*

On November 10, 1995, *amicus* Ken Wiwa's father, Ken Saro-Wiwa, a highly acclaimed poet and leader of the Movement for the Survival of the Ogoni People ("MOSOP"), an organization formed to protest the deleterious effects of oil exploitation in the Ogoni region, was hanged in Port Harcourt, Nigeria. His death followed substantial efforts by the Nigerian authorities and Royal Dutch/Shell to silence MOSOP through ruthless acts of brutality and intimidation.

For example, from August to October 1993, Royal Dutch/Shell, acting through its subsidiary Shell Petroleum Development Company ("SPDC"), supported the Nigerian military as they attacked villages, killing over 1,000 people, displacing over 20,000 more, and destroying property using planes, boats and weapons paid for by Royal Dutch/Shell. *See generally Wiwa v. Royal Dutch Petrol. Co.*, (S.D.N.Y. Nov. 8, 1996) (No.

96 Civ. 8386); *Wiwa v. Shell Petrol., N.V.*, Fifth Am. Compl. (S.D.N.Y. Mar. 16, 2009) (No. 96 Civ. 8386).

On May 22, 1994, the Nigerian military arrested the entire MOSOP leadership, including Saro-Wiwa. In October 1995, after a sham trial, Saro-Wiwa and others were sentenced to death. They were beaten and denied food, water and bedding up until the day they were hanged.

Amicus Wiwa filed a lawsuit for the extrajudicial killing of his father under the ATS and TVPA. The case was actively litigated for over one decade before resulting in a settlement on the eve of trial. Following that settlement, *amicus* Wiwa said:

> "Although our journey to this victory has been drawn out and emotionally draining, we are extremely satisfied with the result. For fourteen years and more we have suffered our loss privately and publicly but for the most part we have endured our pains away from the media spotlight. It has been a lonely, agonizing and traumatic period for many of us, but we were sustained in our grief by this lawsuit, holding out for the day when we might finally be given the opportunity to exorcise our grief."

Ken Wiwa, Statement, June 8, 2009, *available at* http://www.ccrjustice.org/files/Wiwa_v_Shell_Statement_of_Pl.

3. *Satisfaction of jurisdictional and statutory requirements ensures that cases are properly before U.S. courts.*

Amici curiae submit that there is a common thread that runs through the cases of *amici curiae* Santos, Romagoza, and Wiwa. That thread is that they were all able to maintain lawsuits to redress the severe pain and anguish they suffered as a result of brutal human rights crimes committed at the direction of a third party with substantial and concrete ties to the United States.

In that regard, their cases are somewhat unique; most perpetrators of human rights crimes never come to, or have any connection with, the United States, thus remaining completely beyond the reach of U.S. courts. Given recent government efforts, their presence here is, for good reason, likely to become rarer still. According to government officials, since fiscal year 2004, Immigration and Customs Enforcement has removed over 400 human rights violators, and is currently pursuing over 1,900 leads and removal cases involving individuals suspected of engaging in human rights crimes from approximately 95 countries. U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, *The Human Rights Violators and War Crimes Unit*, http://www.ice.gov/human-rights-violators/ (last visited December 19, 2011).

By contrast, organizations and corporations often choose to do business in the United States. In so doing, they can subject themselves to the jurisdiction of U.S. courts. In fact, in the case brought by *amicus* Wiwa, the Court of Appeals for the Second Circuit concluded that the defendants had sufficient ties with

the United States to establish personal jurisdiction. *Wiwa v. Royal Dutch Petrol. Co.*, 226 F. 3d 88, 98-99 (2d Cir. 2000).

After concluding that personal jurisdiction was satisfied, the court in *Wiwa* reversed the district court judgment dismissing the case on forum non-conveniens grounds, upon specifically finding that the district court judge had not given sufficient weight to the fact that the plaintiffs had brought suit under the ATS and the TVPA. The court stated, "in passing the Torture Victim Protection Act, Congress has expressed a policy of U.S. law favoring the adjudication of such [torture] suits in U.S. courts." *Wiwa*, 226 F.3d at 106. According to the court, the policy "favoring" U.S. courts is consistent with Congressional intent to provide a meaningful remedy to victims. "Congress noted that universal condemnation of human rights abuses 'provides scant comfort' to the numerous victims of gross violations if they are without a forum to remedy the wrong." *Wiwa*, 226 F.3d at 106 (quoting H.R. Rep. No. 102-367 at 3,

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[4] In addition to the requirement that persons establish sufficient contacts with the United States to permit personal jurisdiction, *Republic of Austria v. Altmann*, 541 U.S. 677, 713 (2004) (Breyer, J., concurring), there are other substantial barriers to such suits, including (i) the express exhaustion requirement in the TVPA, 28 U.S.C. 1350 note, § 2(b), and perhaps in the Alien Tort Statute, *see Sosa*, 542 U.S. at 733 & n.21; (ii) the *forum non conveniens* doctrine; (iii) the political question doctrine and "case-specific deference to the political branches," *Sosa*, 542 U.S. at 733 n.21; *see Altmann*, 541 U.S. at 714 (Breyer, J., concurring); (iv) the act of state doctrine; and (v) the substantive limitations placed on causes of action, such as the TVPA's limitation to torture and extrajudicial killing, and the Alien Tort Statute's limitation to "a handful of" "universal" norms with such "definite content" that they give rise to a federal common law cause of action under *Sosa*, 542 U.S. at 714, 732.

102d Cong., 1st Sess. (1991) reprinted in 1992 U.S.C.C.A.N. 85).

B. Holding Human Rights Abusers Accountable Provides Redress and Promotes Healing for Torture Survivors and Their Communities.

The core problem ATS and TVPA litigation addresses is *impunity* for perpetrators of gross human rights violations. Impunity creates a culture that allows abuse to continue—what is done without punishment can be repeated without fear. The prospect of repeated violations causes extreme anxiety for victims and undermines their sense of justice. The opportunity to seek redress and accountability, by contrast, promotes healing. Thus, ATS and TVPA litigation helps survivors and also their communities by, *inter alia*, providing judicial acknowledgement of their harm and breaking the silence that enables abusers to act with impunity.

1. *The ATS and TVPA are important vehicles for judicial acknowledgement of the harm suffered by human rights victims.*

The authoritative record of events created during a trial serves as a public acknowledgment of harms endured by survivors. This affords survivors a measure of what legal scholar Martha Minow has called "the key of formal justice." MARTHA MINOW, BETWEEN VENGEANCE AND FORGIVENESS: FACING HISTORY AFTER GENOCIDE AND MASS VIOLENCE, 26 (1998). Formal justice is significant because it represents "the determination of facts about the past, and a full, public, and official acknowledgement thereof." MICHELLE PARLEVLIET, CONSIDERING TRUTH:

DEALING WITH A LEGACY OF GROSS HUMAN RIGHTS VIOLATIONS, 16 Netherlands Q. of Hum. Rts. 143, 145 (1998).

Psychologists have found that official acknowledgment of the truth of survivors' stories counters the past denials or distorted versions of events and helps to alleviate the resulting trauma. *See* Jamie O'Connell, Gambling with the Psyche: Does Prosecuting Human Rights Violators Console Their Victims?, 46 HARV. INT'L L.J. 295, 320-23 (2005). Court judgments also provide a "direct, moral, and ethical response to victims on behalf of society that demonstrates the state is validating their innocence and their lack of culpability in the deeds." Laurel E. Fletcher & Harvey Weinstein, *Violence and Social Repair: Rethinking the Contribution of Justice to Reconciliation*, 24 HUM. RTS. Q. 573, 590 (2002).

In addition, the impartiality, solemnity, and formal procedures of U.S. courts provide plaintiffs a respectful forum to adjudicate their allegations. The respect and dignified treatment they are accorded, the perceived control over the litigation process, and the symbolic features of the procedures, provide tangible healing benefits to victims. E. Allan Lind et. al., *In the Eye of the Beholder: Tort Litigants' Evaluations of Their Experiences in the Civil Justice System*, 24 LAW & SOC'Y REV. 953, 957-58 (1990). *Amicus* Romagoza observed that his lawsuit "first gave me the hope I needed in order to believe in justice, to believe that justice can come, particularly in this country, my new country, the USA." Romagoza, Statement, *supra*. This sentiment accurately reflects the political branches' judgment to authorize these lawsuits in the United States.

2. *Breaking the "conspiracy of silence" promotes healing for human rights victims and supports deterrence and justice efforts in their home countries.*

Research indicates that the "conspiracy of silence" — the absence of public discussion that frequently surrounds gross human rights violations—is detrimental to the recovery of survivors because it intensifies their sense of isolation and mistrust of society. *See* JUDITH HERMAN, TRAUMA AND RECOVERY: THE AFTERMATH OF VIOLENCE FROM DOMESTIC ABUSE TO POLITICAL TERROR 9, 93 (1997); *see also*, YAEL DANIELI, PRELIMINARY REFLECTIONS FROM A PSYCHOLOGICAL PERSPECTIVE, IN TRANSITIONAL JUSTICE: HOW EMERGING DEMOCRACIES RECKON WITH FORMER REGIMES 572 (Neil J. Kritz ed., 1995). By contrast, disclosing and sharing the crimes are important to a victim's recovery. *See, e.g.*, O'Connell, *supra* at 322. *Amicus* Dr. Romagoza characterized the significance of testifying at trial:

> "When I testified, a strength came over me. I felt like I was in the prow of a boat and that there were many, many people rowing behind—that they were moving me into this moment. I felt that if I looked back at them, I'd weep because I'd see them again: wounded, tortured, raped, naked, torn, bleeding. So, I didn't look back, but I felt their support, their strength, their energy. Being involved in this case, confronting the Generals with these terrible facts—that's the best possible therapy a torture survivor could have."

Juan Romagoza, Statement, *at* http://www.cja.org/article.php?list&type=251.

Moreover, *amici curiae* understand their role as seeking justice not simply in their personal capacity, but also on behalf of loved ones and all those who were killed or otherwise brutalized and who have been unable to pursue their day in court. Clinicians have noted that survivors pursuing legal action against their perpetrators may find meaning in their experience, a response Professor of Psychiatry Judith Herman has labeled a "survivor mission." Herman, *supra* at 207-11. Carlos Mauricio, who filed suit with *amicus* Dr. Romagoza, felt he testified both for himself but also for those who could not:

> To close the seal of my healing, I needed to talk in front of a jury and tell them my story . . . How many were able to confront the Generals? Very few. They couldn't because they were killed under torture, or they didn't want to . . . [I]n a way, I was the spokesperson for those who for whatever reason, couldn't come.

Rona Marech, *A Survivor's Victory Salvadoran Torturers are Found Guilty,* S.F. CHRON., Aug. 19, 2002, at B1. Similarly, *amicus* Wiwa has referred to his litigation experience as a "communal exorcism." Jad Mouawad, Oil Industry Braces for Trial on Rights Abuses, N.Y. TIMES May 21, 2009 *available at* http://www.nytimes.com/2009/05/22/business/global/22shell.html?ref=kensarowiwa.

3. *ATS and TVPA lawsuits vindicate the precise harm suffered by human rights victims.*

ATS and TVPA lawsuits serve as important vehicles for the vindication of the precise harms suffered by human rights victims. Lawsuits alleging ordinary torts, even if ostensibly similar in nature to

the crimes suffered, do not adequately address the harms suffered by human rights victims.

Victims should not be forced to diminish the realities of their suffering by pursuing claims that do not fully acknowledge the harm inflicted on them. An extrajudicial killing is simply not the same as a wrongful death. *See, e.g., Xuncax v. Gramajo*, 866 F. Supp. 162, 183 (D. Mass. 1995) (finding that municipal tort law is an "inadequate placeholder" for the "grave" wrongs meant to be addressed under § 1350, and that it would be inappropriate to reduce claims of torture and summary execution to "garden-variety municipal tort[s].").

Furthermore, the United Nations Committee Against Torture has found that lesser charges are inadequate substitutes for penalizing human rights crimes as defined in international law. Consequently, the Committee Against Torture has stressed that it is important to provide a specific remedy for torture *qua* torture:

> "The Committee recognizes that most States parties identify or define certain conduct as ill-treatment in their criminal codes. In comparison to torture, ill-treatment may differ in the severity of pain and suffering and does not require proof of impermissible purposes. The Committee emphasizes that it would be *a violation of the Convention* to prosecute conduct solely as ill-treatment where the elements of torture are also present."

Comm. Against Torture, *General Comment 2, Implementation of Article 2 by State Parties*, ¶9, U.N. Doc CAT/C/GC/2 (Jan. 24, 2008) (emphasis added).

The Committee Against Torture has justified the Convention's requirement for specific domestic legislation against human rights crimes because of the need to strengthen and promote prohibitions against human rights crimes, "naming and defining this crime will promote the Convention's aim, inter alia, by alerting everyone, including perpetrators, victims, and the public, to the special gravity of the crime of torture." *Id.*

Amici curiae submit that there is a "special gravity" associated with human rights crimes. For example, while an ordinary criminal may kidnap, he seldom has reason, or opportunity, to deny knowledge of the victim's whereabouts to inquiring family members. By contrast, family members seeking someone who has vanished often turn first to state actors, such as the police, creating an opportunity for the denial that turns kidnapping by the state into disappearance. *See, e.g., Forti v. Suarez-Mason*, 694 F. Supp. 707, 710-11 (N.D. Cal. 1988) (stating elements of a disappearance claim under the ATS). The denial by the state, in and of itself, engenders a distinct harm. This was recognized by the U.N. General Assembly in 1978 when it passed the U.N. Resolution on Disappeared Persons in part because of a concern about the "persistent refusal of [competent] authorities . . . to acknowledge that they hold such persons in their custody." U.N. Resolution on Disappeared Persons, G.A. Res. 33/173, U.N. GAOR, 33rd Sess., Supp. No. 45, U.N. Doc. A/RES/33/173, at 158 (Dec. 20, 1978).

Simply put, ordinary tort law suits are not adequate substitutes for ATS and TVPA claims.

CONCLUSION

To ensure that all survivors of human rights abuses continue to have the opportunity to seek redress in to U.S. courts, this Court should hold that corporations and organizations are subject to suit under the ATS and TVPA.

Respectfully submitted,

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APPENDIX

APPENDIX

LIST OF *AMICI CURIAE*

Dr. Juan Romagoza Arce was working as a country doctor for the rural poor in El Salvador in 1980 when he was detained and brutally tortured for 22 days at the National Guard Headquarters. After his release, he fled to the United States and was granted political asylum in 1983. In 2000, he and two other plaintiffs filed a lawsuit, under the ATS and the TVPA, against Generals Carlos Eugenio Vides Casanova and José Guillermo García. A jury found the Generals liable for Dr. Romagoza's torture under the doctrine of command responsibility. Dr. Romagoza recently returned to El Salvador, where he founded a community health clinic in Usultán as well as El Centro Romero, a home for impoverished persons living with HIV. In the fall of 2009, he was appointed Coordinator of the Basic Integral Health System of the Department of Usulután.

Cecilia Santos Moran was a mathematics student at the National University of El Salvador and an employee in the Salvadoran Ministry of Education when she was arrested at a shopping center in San Salvador in September 1980. Ms. Santos was tortured at the National Police Headquarters and then detained for three years without a fair hearing. She came to the United States in 1983 and later filed a lawsuit, under the ATS and TVPA, against Colonel Nicolás Carranza, former Vice Minister of Defense. A jury found Colonel Carranza liable, under the doctrine of command responsibility, for the torture suffered by Santos. She now lives in New York where she is the director of the Centro Salvadoreño, an organization that encourages socioeconomic

and cultural progress among Latino immigrant communities.

Ken Wiwa is a journalist and award-winning author. His book, *In the Shadow of a Saint*, is a memoir of his father, Ken Saro-Wiwa, an author and environmental activist, who, in 1995, was hanged after a sham trial in Port Harcourt, Nigeria. In 1996, Wiwa filed a lawsuit, under the ATS and TVPA, against Royal Dutch/Shell for, *inter alia*, directing and conspiring with the Nigerian military in the arbitrary arrest, detention, and extrajudicial killing of his father. In 2009, on the eve of trial, Royal Dutch/Shell agreed to settle the case for $15.5 million.